

Judge McElyea and Holly- I have reviewed comments by the Adj. Advisory Group and those I submitted. Mine were a bit truncated due to time constraints. I have had a bit more time to think more about the UM Study, my comments and those of others on the group. Please consider these my supplemental comments for consideration by the Committee or WPIC.

Concurrent Jurisdiction. My initial comments were incomplete. Some of that may stem from my not understanding what exactly the study views as “concurrent” jurisdiction. I will try and be more basic. I think the issue of jurisdiction over water matters is an issue which needs to be addressed. Presently we have two courts and one administrative agency with jurisdiction over water matters, each in different areas. I agree with the study that this is a source of confusion and perhaps at times a waste of resources. I think a discussion of clarifying or modifying the jurisdiction issue in the long term is a conversation worth having.

In the near term the water court needs to be focused on the adjudication. I also think allowing certification cases to be completed in the water court is a consideration worth exploring. In the long term water distribution will need to be done by the court system. Distribution of basin-wide decrees involving multiple district courts each within their own districts will be a challenge in my view. I can see merit in utilizing the division water judges or providing the water court with a role in administration of basin-wide decrees once we get to that stage. I reiterate my initial comments on the need for a very clear process on exactly when the water court decrees become enforceable and will in fact be enforced.

To unwind the present jurisdictional complexities the following is a proposal I will put out for discussion:

1. Water Court Jurisdiction: Adjudication of all “existing water rights” as presently performed. Modify certification statutes to allow water court through its water judges to complete certification cases and provide relief to the parties.
2. Distribution: Allow District Courts to continue to enforce district court decrees until the water court decrees become enforceable. Allow district courts to enforce water court decree, or portions of the decree, as necessary or requested by water users within the jurisdictional area of the district court. If enforcement involves multiple district court jurisdictions empower the water courts, either through the division judges or the water court judges, to oversee and coordinate distribution of a basin-wide decree.
3. “Updating” Decrees: This is a whole topic unto its own but in my view probably one of the most important as I tried to indicate in my prior comments. I would suggest a discussion be done on just how this is to occur or if it needs to occur. The present idea that post-1973 changes would all go through the DNRC change process in many instances has not occurred. If updating is desired, or necessary, I think the present administrative process is ill suited to complete the task. I’m not sure what the answer is to this issue but would like to at least have the discussion on whether the water court could update its decrees to reflect post-1973 changes.

Records Coordination. I touched on this in my prior comments but should probably expand some. Accurate and timely water rights records are a basic function of our system. That said I think what we live with needs to improve dramatically. Updates to abstracts and decrees seems to take significant time. Getting an updated source tabulation which identifies rights as modified is a hit and miss proposition. Updates on ownership has become complicated or even compromised by the use of geocodes in identifying water right ownerships. “Splits” have become more complicated than is necessary. I am quite sure there is a “technical” reason for the state of the water right data bases, but in many instances those data sources are difficult to navigate or worse provide outdated or incorrect information. This needs to be addressed in the short and long term.

Appeals of Permit/Change Decisions to the Water Court. I think whether this would be advisable depends in part on how we are going to “update” decrees and if necessary how that would be done. If the Water Court is utilized to update decrees then this topic may be moot. If the Water Court is utilized to perform other long-term functions then using it as a reviewing court for DNRC permit decisions would seem to have merit. Simply having a water court around for the purpose of reviewing DNRC decisions is probably not warranted in and of itself without other functions for the court to perform.

Please include these comments with my initial comments on the topics noted. I still feel there is much more to discuss within each of the areas described within the UM study and as noted by the various issues discussed above. If any of these topics get discussed further either by the Committee or by WPIC I would be happy to participate. Thx. John Bloomquist